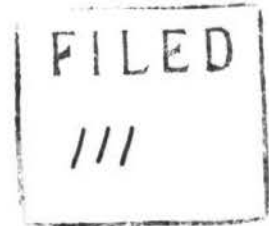


SCHOOLS: The board of education of a six-director
SCHOOL TRANSPORTATION: public school district is not authorized
by Section 167.231, RSMo, to submit to
the voters of the district the question of whether transportation
to and from school at the expense of the district should be provided
for pupils living one mile or more from school.

OPINION NO. 111

April 21, 1975

Honorable S. Sue Shear
Representative, District 76
c/o House Post Office
State Capitol Building
Jefferson City, Missouri 65101



Dear Representative Shear:

This is in response to your request for an opinion from this office as follows:

"Upon receipt of a petition signed by ten resident taxpayers of the district is the board of education of a six-director public school district obligated, under Section 167.231 R.S.Mo., to submit the proposition of providing transportation to and from school at the expense of the district for pupils living more than one mile from school to the voters?"

"Does a board of education have the power to submit the question above to the voters in the event it wishes to be guided in its decision by the voters?"

We understand from the information submitted there are more than ten taxpayers who have petitioned the board of education of the School District of Clayton, Missouri, to submit to the voters at the next annual school election the question whether the Clayton School District should provide transportation to and from school at the expense of the district for pupils living more than one mile from school. You inquire whether the board of education is required to submit this proposition to the voters of the District when requested by a petition signed by ten or more taxpayers in the District, and also whether the board of education has the power to submit the question to the voters in the event it wishes to be guided in its decision by voters.

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Section 167.231, RSMo Supp. 1973, provides as follows:

"Within all school districts except metropolitan districts the board of education shall provide transportation to and from school for all pupils living more than three and one-half miles from school and may provide transportation for all pupils living one mile or more from school. When the board of education deems it advisable, or when requested by a petition signed by ten taxpayers in the district, to provide transportation to and from school at the expense of the district for pupils living more than one-half mile from school, the board shall submit the question at an annual or biennial meeting or election or a special meeting or election called for the purpose. Notice of the election shall be given as provided in section 162.061, RSMo. If two-thirds of the voters voting at the election are in favor of providing the transportation, the board shall arrange and provide therefor."

Under this statute, it is mandatory for the school board to furnish transportation for pupils living more than three and one-half miles from school; and it is discretionary with the school board whether they provide transportation for pupils living one mile or more from school. There is no provision for either of these questions to be submitted to the voters at an annual school election or at a special school election for this purpose. No election of public body or agency may be held unless provided for by law. State ex rel. McHenry v. Jenkins, 43 Mo. 261 (1869); State ex inf. Rice ex rel. Allman v. Hawk, 228 S.W.2d 785 (Mo. 1950). Public school boards obtain their authority by statute and have no inherent power. Cape Girardeau School Dist. No. 63 of Cape Girardeau County v. Frye, 225 S.W.2d 484 (St.L.Ct.App. 1949).

In State ex rel. Edwards v. Ellison, 196 S.W. 751, 752-753 (Mo.Banc 1917), the question before the court was the validity of a local option election ordered by the county court concerning the sale of intoxicating liquors within two years subsequent to an election on the same question. The statute provided that the question should not be submitted again within four years next after an election thereafter. The Supreme Court, in holding that the county court had no jurisdiction to entertain a petition to hold the election, stated as follows:

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"County courts have no inherent authority to call local option elections. Their jurisdiction is derived solely from the statute. Section 7238 authorizes, generally, the calling of an election, and section 7244 specifically prohibits its being called during a named period. The court has no more jurisdiction to call such an election during a period covered by section 7244 than it would have to call one if there were no section 7238. . . ."

This same principle of law applies to school boards.

It is our opinion that the board of education of a six-director public school district is not required under Section 167.231 to submit the proposition of whether transportation at the expense of the district should be provided for pupils living more than one mile from school because the statute does not provide for such an election. The board of education has no authority on its own initiative to submit such question to the voters at an annual or special election for the same reason. It is our view that it would be an unlawful expenditure of public funds for the conduct of an election not provided for by statute.

CONCLUSION

It is the opinion of this office that the board of education of a six-director public school district is not authorized by Section 167.231, RSMo, to submit to the voters of the district the question of whether transportation to and from school at the expense of the district should be provided for pupils living one mile or more from school.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,



JOHN C. DANFORTH
Attorney General